*Stanley,* 79 Tenn. 316), an indorsement on the back of a promissory note (*Hunt* v. *Hunt,* 4 N. H. 434), a letter to the donee (*Byers* v. *Hoppe,* 61 Md. 206; *High's Appeal,* 2 Doug. 515), or a certificate of unorthodox orthography (*Mitchell* v. *Donohue,* 100 Cal. 202). As to the other point in the instant case, namely, whether the instrument was conditional or not, the decision appears to be consonant with the policy of the courts to be averse to hold such wills conditional. In a leading case the following rule of construction was laid down: "When the event which constitutes the contingency expressed in the instrument can be reasonably construed to have been the occasion for making the will at a particular time rather than as the reason for making it in a particular way, it should be so construed; and * * * that, unless it clearly appear from the instrument itself that it was not to operate in a certain event, it will be entitled to probate." *Forquer's Estate,* 216 Pa. St. 331, annotated in 8 Ann. Cas. 1150. See also to the same effect: *In the Goods of Dobson* (1866), L. R. 1 P. D. 88; *In the Goods of Mayd,* 6 P. D. 17; *In the Goods of Spratt* (1897), P. D. 28; *Likefield* v. *Likefield,* 82 Ky. 589; *Damon* v. *Damon,* 8 Allen 192. The question is, does the language show why decedent made a will, or does it show the condition on which he desires it to be operative as a will? The tendency is to hold the former unless the latter is clear from the language; and in that case he has made a will, and the reason why he did it is unimportant. In the latter case, he has not, as events have fallen, made any will. The noticeable lack of harmony in both the English and American cases is due to the particular circumstances surrounding the particular instrument construed. In fact, as was said by Mr. Justice Holmes in *Eaton* v. *Brown,* 193 U. S. 416, "Each case must stand so much on its own circumstances and words." On the whole, the decision in the principal case appears unassailable, and the words, "in case of any serious accident," seem to be rightly deemed to have indicated a contemplation of death.

WORKMEN'S COMPENSATION LAW—HERNIA—REFUSAL TO UNDERGO OPERATION.—A workman, in the course of his employment, suffered an accidental injury which resulted in a slight hernia. The evidence showed that the disability could be removed only by a surgical operation under a local or general anæsthetic. He refused to undergo the operation tendered him by his employer. *Held,* his refusal was unreasonable and there should be no award of compensation until he submitted to the operation, which was not "attended with danger to life or health." *O'Brien* v. *Albert A. Albrecht Co., et al.* (Mich., 1919), 172 N. W. 601.

Undoubtedly the test applied by the court in the instant case is correct, *i. e.,* "whether the workman in refusing to undergo the surgical operation acted unreasonably". HONNOLD, WORKMEN'S COMPENSATION, 526. Yet, on almost identical facts, another court of last resort has held that a refusal to undergo an operation for hernia is not unreasonable. *McNally* v. *Hudson & Manhattan R. Co.,* 87 N. J. L. 455. Such a refusal on the part of a plaintiff in a personal injury case is not prejudicial. *Blate* v. *Third Ave. R. R. Co.* (N. Y.), 44 App. Div. 163. The fact that the hernia can be cured by an operation does not preclude the recovery of damages as for a permanent injury, (*Id.,* also,

*Guild* v. *Portland Ry. L. & P. Co.*, 64 Or. 570), or of compensation as for permanent disability (*Feldman* v. *Braunstein*, 87 N. J. L. 20). If only a trifling operation is in question, British and American courts unquestionably support the decision in the principal case: *Dowds* v. *Bennie & Son*, 40 Scottish L. R. 239, (massage of ankle); *Anderson* v. *Baird & Co.*, 40 S. L. R. 263, (slight operation on thumb); *Donnelly* v. *Baird & Co.*, 45 S. L. R. 394, (amputation of finger); *Lesh* v. *Ill. Steel Co.*, 163 Wis. 124, (removing nodule on leg); *Kricinovitch* v. *Am. Car & Foundry Co.*, 192 Mich. 687, (loosening up tissue of leg). On the other hand it appears settled that a refusal to undergo a "major" operation is reasonable, *Jendrus* v. *Detroit Steel Products Co.*, 178 Mich. 265, (serious abdominal operation). The apparent difficulty is to determine whether "herniotomy" is a "major" operation. It is analogous to the frequently recurring question in Army Courts Martial, *i. e.*, whether the operation "involves risk of life." W. D., 1906, G. O. 43, Par. II. Some courts hold that slight danger of death is no excuse for refusal, even if the operation may be considered "serious". *Joliet Motor Co.* v. *Industrial Board of Ill.*, 280 Ill. 148, (removal of cataract from eye). But in *McNally* v. *Hudson & Manhattan R. Co., supra,* the court says, "Although the peril to life seems to be very slight, forty-eight chances in twenty-three thousand, nevertheless the idea is appalling to one's conscience that a human being should be compelled to take a risk of death, however slight that may be, in order that the pecuniary obligation created by the law in his favor against his employer may be minimized." See note to *McNally case, supra,* 10 N. C. C. A. 185; note to *Joliet Motor Co. case, supra,* 15 N. C. C. A. 75; 26 YALE LAW JOUR. 160; L. R. A. 1916A, 139, 259; 1917D, 174; Anno. Cas. 1915D, 482.